

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petition for Rulemaking or, Alternatively, a)	
Waiver of the Closed Bidding Rules for C Block)	RM 11019
Licenses in the Broadband Personal)	
Communications Services)	

To: The Commission

COMMENTS IN SUPPORT OF PETITION FOR RULEMAKING

Pursuant to Section 1.405 of the Commission's rules, Verizon Wireless submits these comments in support of the CTIA – the Wireless Association ("CTIA") petition for rulemaking requesting that the Commission open to all bidders all licenses available in Auction No. 58.¹ In its recently filed petition for reconsideration of the Public Notice announcing Auction No. 58,² as well as its comments on the Public Notice,³ Verizon

¹ See *Public Notice*, Report No. 2663, RM 11019 (rel. July 15, 2004) seeking comment on CTIA – The Wireless Association Petition for Rule Making or, Alternatively, a Waiver of the Closed Bidding Rules for C Block Licenses in the Broadband Personal, filed July 8, 2004 ("*CTIA Petition*").

² See *Verizon Wireless Petition for Reconsideration* (filed July 19, 2004) ("*Verizon Wireless Petition*"), *Public Notice Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Comment Sought on Reserve Prices or Minimum Opening Bids and other Auction Procedures*, Public Notice, DA 04-1639, Report No. AUC-03-58-A (Auction No. 58) (rel. June 18, 2004) ("*Auction No. 58 Public Notice*"). We ask that the *Verizon Wireless Petition* be made a part of this record, and have appended it here.

³ Comments of Verizon Wireless on *Auction No. 58 Public Notice* (filed July 8, 2004). Unless otherwise noted, all references to Comments and Reply Comments are to those filed on the *Auction No. 58 Public Notice*.

Wireless urged the Commission to take this same action, because open eligibility will best serve the goals of section 309(j) of the Communications Act.⁴

Ample information filed in response to *Auction No. 58 Public Notice* shows that a rulemaking is not only prudent, it is required. Several parties are already on the record as supporting open eligibility.⁵ Even those parties that oppose opening the auction to all bidders make requests that would require the Commission to review its policies with respect to the C and F block set-asides. For example, several commenters suggest that the Commission should further “enhance” or “augment” the so-called “designated entity” rules that govern eligibility to participate in these set-aside auctions⁶ or change specific designated entity eligibility requirements.⁷ Still others suggest that changed circumstances require that the Commission change its rules and close more licenses.⁸ Clearly in the face of these varied requests to modify the Commission’s designated entity rules, the Commission must proceed with a rulemaking proceeding.

⁴ CTIA seeks in the alternative a waiver of the closed bidding rules for C block licenses in the Broadband Personal Communications Services. Verizon Wireless believes that there is ample cause for the Commission to grant a waiver of the rules as they apply to the “NextWave licenses.” *See CTIA Petition* at 16-18; *see also Verizon Wireless Petition* at 13-14. However, we believe that the better course is for the Commission to conduct a rulemaking and remove the restrictions from all licenses in Auction No. 58.

⁵ *See e.g.*, Comments of CTIA, Comments of T-Mobile, Comments of Qualcomm, Comments of Verizon Wireless; *see also* Comments of Rural Cellular Association, *CTIA Petition*.

⁶ *See, e.g.*, Comments of Alta Communications at 2; Comments of Madison Dearborn Partners, LLC at 2, Comments of Rural Telecommunications Group at 3, comments of Media Venture Partners at 2; Catalyst Investors at 2.

⁷ Comments of Council Tree at 5-7.

⁸ Comments of Council Tree at 8-11. Dobson Communications Corporation (DCC) requests the Bureau to waive the Commission’s sunset of its grandfathering provisions, a request better considered in the context of a rulemaking proceeding. *See gen.* Comments of DCC.

Furthermore, CTIA has clearly outlined the considerable change in the marketplace since 2000, and the shortage of suitable spectrum to meet the increased demand for service.⁹ Other parties agree that circumstances have changed since 2000, but argue that these changes require that the Commission keep its designated entity rules intact.¹⁰ If it is true, however, that circumstances have changed, then the Commission is obliged to actively review whether these changed circumstances require it to amend its rules. It cannot, as many parties urge, simply decide the impact of such changes through inaction.

In contrast to CTIA's evidence of phenomenal growth of demand for these services, nowhere in the record is there any evidence that the award of set-aside licenses to designated entities has produced service to the public by these entities that would justify a continuing set-aside for a restricted class of carriers. Instead, despite the set-aside, the majority of service in the top 200 F block markets¹¹ is offered by licensees that are not now and were not at the time of auction qualified to participate in a set-aside. In the top 200 markets in the United States, which include relatively small cities with a population of 265,000 or more, approximately 40 percent of the markets are still in the

⁹ *CTIA Petition* at 5-9.

¹⁰ Reply Comments of Council Tree at 8.

¹¹ For a variety of reasons Verizon Wireless believes that the F block is a fair proxy for the success of the set-aside licensees providing service to the public. Because the F block was not subject to the license restructure and reauction that the C block was, it is easier to trace its path of ownership. Furthermore, the prices paid at auction were such that, unlike for part of the C block, it cannot be argued that F block carriers' debt to the government was a financial drag on their operations. Parties cannot claim that the current status of the F block is as a result of its "difficult history."

hands of designated entities.¹² Moreover, it is unclear whether entities that operate independently of larger carriers have brought service to the public.¹³ If facts exist that show that the set-aside program has been a success and that would justify the Commission keeping a set-aside for designated entities, the Commission must first seek these facts, examine them and make an active decision to retain, rather than simply default to, restrictive bidding rules.

Furthermore, despite claims to the contrary,¹⁴ the Commission has frequently decided that it need *not* apply eligibility restrictions to certain set-aside licenses in order to satisfy the Section 309(j) objective of promoting economic opportunity by “disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”¹⁵ Council Tree cites language from a Commission Order adopted in 1994, a year before the Commission held its first auction, to support the assertion that the Commission “has long recognized that bidding credits alone are insufficient. . . .”¹⁶ In the decade since then, as the Commission gained considerable experience by holding

¹² This analysis does not include any licenses that were openly auctioned and purchased in Auction No. 35, nor do we include any NextWave or Urban Communicators licenses, including those that NextWave sold to Cingular. The total universe is thus 163 licenses in the top 200 markets. Source: <http://wireless.fcc.gov/uls>

¹³ The Commission’s set-aside policies force companies into relationships that unnecessarily complicate the process of bringing service to the public. *See* Comments of the Rural Cellular Association at 3, *CTIA Petition*.

¹⁴ Comments of American Women in Radio & Television at 1; Comments of Maxicom PCS, LLC at 3; Reply Comments of the Designated Entity Program Supporters at 3.

¹⁵ 47 U.S.C. § 309(j)(3)(B).

¹⁶ Reply Comments of Council Tree at 8, citing to *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 414-15 (rel. Nov. 23, 1994).

dozens of auctions, it recognized and has repeatedly acknowledged that other tools besides set-asides (*e.g.*, bidding credits) are available to promote this objective, and that these tools have been effective in providing designated entities with an opportunity to compete successfully in auctions against larger, well-financed entities. In recent years the Commission, in fact, has declined several times to set aside spectrum for the exclusive use of “small business.”¹⁷ Moreover, the Commission has noted that its disaggregation and newly-adopted leasing rules would help small businesses to negotiate after-auction access to spectrum.¹⁸ Maintaining restrictions that have proven not to serve the public interest, in the face of other Commission decisions finding that the goals of Section 309(j) are fully achieved by open auctions, would be arbitrary and unlawful.

Congress has directed the Commission to promote in its spectrum auction program “the development and rapid deployment of new technologies, products, and service for the benefit of the public”¹⁹ The Commission has repeatedly stated that in furtherance of this goal, the spectrum auction process is designed to ensure that

¹⁷ See, *e.g.*, *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162 (2003) (“*AWS Order*”), at ¶ 148. The Commission also notes in the *AWS Order* that “We do not see a need to supplement the incentives for small business participation provided elsewhere in this order by foreclosing any of the licenses to other bidders.” *AWS Order* at ¶ 68. See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd 16266 (2000), at ¶ 45; *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999), at ¶ 112.

¹⁸ *AWS Order* at ¶ 68.

¹⁹ 47 U.S.C. § 309(j)(3)(A).

licenses are awarded to the parties that value them most highly, because these parties are most likely to put them to prompt use.²⁰ Especially in light of the history of the set-asides, in which restricting eligibility to small businesses largely has failed to result in the provision of wireless service by designated entities, the Commission must allow Auction No. 58 to proceed as an open auction. The Commission must enable market forces, not regulation, to ensure that those parties that most highly value the spectrum (and can thus be expected to put it to prompt use) are free to compete in an open auction.

With all other spectrum bands in which licenses have been recently auctioned, the Commission has discarded set-asides and relied instead on bidding credits to encourage the participation of small business entities. The Commission's recent authorization of spectrum leasing provides small business entities with yet another new way to gain access to spectrum. Restricting eligibility in spectrum auctions is clearly not needed to provide opportunities for entrepreneurs to participate in the provision of spectrum-based services. The Commission should not ignore the very real costs – in service delay as well as in auction revenue – that set-asides impose on the licensing process. A rulemaking

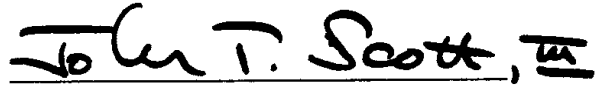
²⁰ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 (1994), at ¶ 5; *In re FCC Report to Congress on Spectrum Auctions*, 13 FCC Rcd 1906 (1997) (“[A]uctions encourage firms who value the spectrum the most to use it productively and in innovative ways”).

need not delay the scheduled start of Auction No. 58, if the Commission quickly grants the CTIA Petition.²¹

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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Date: July 30, 2004

²¹ See Comments of Verizon Wireless at 4-5; *Verizon Wireless Petition* at 11-13.

Certificate of Service

I hereby certify that on this 30th day of July a copy of the foregoing “Comments in Support of Petition for Rulemaking” in RM-11019 were sent by U.S. Mail to the following party:

Diane Cornell
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A handwritten signature in black ink, reading "Sarah E. Weisman". The signature is written in a cursive style with a horizontal line underneath the name.

Sarah E. Weisman